S.B.Civil Second Appeal No.323/2006.

M/s. Sanklecha Travels, Pali.
vs.
The State of Rajasthan and others.

Date : 14.2.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. BL Maheshwari, for the appellant.

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Heard learned counsel for the appellant.

The plaintiff/appellant filed suit for injunction against the respondents seeking injunction against the respondents from recovering Rs.77,469/-. The suit was dismissed by the trial court vide judgment dated 29.4.2005 passed under Order 7 Rule 11 read with Section 151 CPC on the ground that the plaintiff did not serve a notice under Section 80 CPC despite the fact that cause of action accrued to the plaintiff when No Use Certificate was refused by the authority on 29.3.2004, an year before filing of the suit by the plaintiff. The trial court also held that the suit is barred under Rule 16 of the Taxation Rules and the trial court held that the plaintiff has not filed the suit with clean hands. The appellate court vide judgment and decree dated 9.12.2005 upheld the judgment

of the trial court only on the ground of bar of civil suit under Section 16 of Rajasthan Motor Vehicles Taxation Act. Hence, this second appeal.

Learned counsel for the appellant submitted that after the decision of two courts below, the plaintiff applied for payment of dues but in installments which according to learned counsel for the appellant because of the dismissal of the suit and, therefore, that request was subject to all objections. It is submitted that substantial amount of more than Rs.60,000/- has already been deposited by the plaintiff.

In view of the above, no useful purpose can be served even if the appeal of the appellant is allowed and the suit for injunction continues because of the simple reason that unless consequential relief of refund of amount is not claimed, mere suit for injunction would not be maintainable. For refund of the amount, the appellant/plaintiff will have to value the suit on the basis of relief which the plaintiff will seek and that will make the suit beyond the pecuniary jurisdiction of the trial court.

In these circumstances, there is no reason to interfere in the orders passed by the two courts below rejecting the plaint of the plaintiff.

If the plaintiff can get any relief from the civil court and the suit is maintainable to challenge the action of the respondents, then he may file separate suit for recovery of the amount, which if he has deposited subject to objections or under protest.

Consequently, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya